

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Applications of)

WORLDCOM, INC., and its Subsidiaries)
Assignor)

AND)

WORLDCOM, INC., and its Subsidiaries)
as DEBTOR IN POSSESSION)
Assignee)

For Consent to Assign Commission Licenses)

Nos. '

RECEIVED

OCT 23 2002

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

**INFORMAL OBJECTION TO
ASSIGNMENT APPLICATIONS**

¹ The following applications are the subject of this objection: BALMD-20020820AAA; BALMD-20020820AAB, BALMD-20020820AAC, BALMD-20020820AAD, BALMD-20020820AAE; ULS Applications 0000995974,0000996769; 0000998447; 0000999049, 0000999137,0000999185,0000999425,0001001637,0001001655,0001001683.

SUMMARY

The Office of Communication of the United Church of Christ, Inc. (“OC-UCC”) respectfully submits the instant informal objection in support of: (1) the denial of the assignment applications filed by WorldCom, Inc. and its subsidiaries (“Assignment Applications”) seeking the Commission’s consent to the assignment of all of the FCC authorizations issued to, or held by, WorldCom, Inc. and its subsidiaries (“FCC Authorizations”); and (2) the designation of WorldCom’s Assignment Applications for hearing to determine whether WorldCom is fit to be a Commission licensee. OC-UCC urges the Commission to work with the Bankruptcy Court overseeing WorldCom’s Chapter 11 case to appoint a trustee with clean hands and the requisite character qualifications to hold and operate WorldCom’s authorizations.

WorldCom committed numerous acts of fraud and deception before the Commission and other governmental entities. These acts violate the Commission rules and make WorldCom unqualified to be a Commission licensee. WorldCom is seeking to assign its authorizations to WorldCom Debtor-in-Possession. Established Commission policy requires that the assignment of Commission authorizations serve the public interest convenience and necessity.

The public interest is not served by allowing the assignment of WorldCom’s authorizations to WorldCom Debtor-in-Possession. Rather, this assignment represents a mere formality involving no real change in control or responsibility. As such, the misconduct of WorldCom must also be attributed to WorldCom Debtor-in-Possession. The Commission cannot allow the assignment of these authorizations to *the* Debtor-in-Possession until it holds a hearing to determine whether WorldCom has the requisite character qualifications to be a Commission licensee.

The fraud committed by WorldCom is willful, sweeping in scope and shows a total disregard for its responsibilities as a government licensee. Accordingly, given the magnitude of the fraud WorldCom perpetuated on its shareholders, lenders, American consumers, the SEC and the Commission, WorldCom's Assignment Applications must be denied and the Commission must designate the Applications for hearing to determine if WorldCom is fit to remain a Commission licensee.

TABLE OF CONTENTS

I.	REQUEST FOR RELIEF	2
II.	STANDING	3
III.	FACTS	5
IV.	STATEMENT OF INTEREST	8
V.	THE FCC SHOULD DENY WORLDCOM'S ASSIGNMENT APPLICATIONS BECAUSE WORLDCOM IS UNFIT TO BE A FCC LICENSEE	12
A.	The Commission Has Clear Authority to Take Action	12
1.	The Commission Has Established Clear Character Qualifications for Holders of FCC Authorizations.....	13
a.	WorldCom Engaged in Multiple Misrepresentations to FCC By Submitting Fraudulent Financial Information to FCC	16
b.	WorldCom's Misrepresentations Undermine the FCC's Regulatory Objectives.....	20
c.	Failure to Inform FCC of Material Changes in Financial Information Violates Section 1.65 of the Commission's Rules	22
B.	WorldCom Fails to Meet the Clear Minimum Character Qualification Requirements Established by the FCC	25
1.	The Character Qualification Criteria Are Well Established and Plainly Understood by All Commission Licensees	26
a.	WorldCom's Fraudulent Filings with the SEC Preclude It from Meeting the Commission's Character Requirements	27
b.	Guilty Pleas by WorldCom Officers Equal Criminal Convictions Involving False Statements and Dishonesty	27
2.	WorldCom's Conduct Resulted Not from Incompetence, but from Calculated Fraud and Deception	29
C.	WorldCom's Admitted Conduct Not Only Supports – but Demands – Action by the Commission.....	32

D.	Expanded Control of the Information Infrastructure Demands Higher Standards of Accountability	32
E.	Transfer of FCC Authorizations from WorldCom to WorldCom as Debtor-In-Possession is Insufficient to Ensure Fitness to Remain a Holder of FCC Authorizations.	33
F.	WorldCom’s Deliberate Misdeeds Have Harmed—And Will Continue To Harm—Consumers, Vendors, Shareholders, Lenders, The Telecommunications Industry, And The American Economy.	36
1.	WorldCom’s Fraud Will Have An Incalculable Negative Effect On The Telecommunications Industry And The U.S. Economy.	36
2.	Consumers Of Telecommunications Services May Well Pay Higher Prices As A Direct Result of WorldCom’s Deliberate Fraud.	40
VI.	THE COMMISSION MUST DENY THE ASSIGNMENT APPLICATIONS AND DESIGNATE THEM FOR A HEARING ON WORLDCOM’S CHARACTER QUALIFICATIONS	41
VII.	CONCLUSION	42

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

<hr/>)	
In re Applications of)	
)	
WORLDCOM, INC., and its Subsidiaries)	
Assignor)	
)	
AND)	
)	
WORLDCOM, INC., and its Subsidiaries)	
as DEBTOR IN POSSESSION)	
Assignee)	
)	
<hr/> For Consent to Assign Commission Licenses)	Nos?

**INFORMAL OBJECTION TO
ASSIGNMENT APPLICATIONS**

The Office of Communication of the United Church of Christ, Inc. (“OC-UCC”), pursuant to the rules of the Federal Communications Commission (“Commission” or “FCC”),³ hereby respectfully submits for the Commission’s consideration the instant informal objection seeking: (1) the denial of the assignment applications filed by WorldCom, Inc. and its subsidiaries (“Assignment Applications”)⁴ seeking the Commission’s consent to the assignment of all of the FCC authorizations issued to, or held by, WorldCom, Inc. and its subsidiaries (“FCC Authorizations”); (2) designation of WorldCom’s Assignment Applications for hearing to determine that WorldCom is unfit to be a Commission licensee; and (3) ensure that WorldCom’s

² See *supra* note 1.

³ The filing of informal objections are contemplated by 47 C.F.R. §§ 1.927, 1.935, 1.1313, 21.30, 25.154, 73.3587, 78.22.

⁴ See Attachment A for a complete listing of all pending applications for authorizations filed by WorldCom and its subsidiaries as of Oct. 8, 2002.

FCC Authorizations are only assigned to an assignee with clean hands and with sufficient character qualifications.

After perpetrating the “largest instance of corporate fraud in the history of U.S. commerce,”⁵ WorldCom, Inc. and its subsidiaries commenced a bankruptcy proceeding pursuant to Chapter 11 of the U.S. Bankruptcy Code.⁶ Thereafter, WorldCom filed the above-referenced Assignment Applications seeking the Commission’s consent to assign substantially all of the FCC Authorizations issued to, or held by, WorldCom, Inc. and its subsidiaries from WorldCom, Inc. and its subsidiaries to WorldCom, Inc., as the Debtor-In-Possession (independently “WorldCom-DIP,” but together with pre-Chapter 11 bankruptcy entity “WorldCom”). As will be shown, WorldCom is unfit to be a Commission licensee and the proposed assignment of the FCC Authorizations from WorldCom to WorldCom-DIP will not result in the transfer of the FCC Authorizations to a licensee which has sufficient character qualifications. In support thereof, the following is respectfully submitted for the Commission’s consideration:

I. REQUEST FOR RELIEF

OC-UCC urges the Commission to deny WorldCom’s Assignment Applications because, as will be shown, WorldCom is unfit to be a Commission licensee and unfit to be a holder of any FCC authorizations or certifications.’ The Commission should designate WorldCom’s Assignment Applications for a hearing to confirm that WorldCom is unfit to be a Commission licensee. Further, in order to ensure that WorldCom’s FCC Authorizations are only assigned to

⁵ Christopher Stem & Kathleen Day, *U.S. Ready to Charge WorldCom Ex-Officers; Ebbers May Be Among Target, Source Says*, The Washington Post, July 26, 2002 (“*Ebbers May Be Among Target*”).

⁶ On July 21, 2002, WorldCom, Inc. and its subsidiaries filed a petition under Chapter 11 of the Bankruptcy Code. 11 U.S.C. §§ 101, et. seq. The case is before the U.S. Bankruptcy Court for the Southern District of New York (“Bankruptcy Court”).

⁷ For ease of reference, the holder of FCC licenses, authorizations, and certifications are hereafter referred to as “FCC licensee” or “Commission licensee.”

an assignee with clean hands and with character qualifications satisfactory to the Commission, the Commission should work with the Bankruptcy Court to appoint a trustee or receiver to hold and operate the FCC Authorizations until an acceptable proposed assignee can be found. In the alternative, the Commission should adopt procedures for third party applicants to seek interim authority to operate WorldCom's operations until an acceptable proposed assignee can be found.

II. STANDING

OC-UCC's interests are adversely affected by the Commission's grant of WorldCom's Assignment Applications. Appended hereto as Attachment D is a declaration in the customary form, under penalty of perjury, from Rev. Robert Chase, Director of the Office of Communication, Inc.⁸ Rev. Chase is a resident of Lakewood, Ohio and is a local exchange and long distance customer at his residence, where he receives and can transmit voice and data which travel over facilities interconnected to and that rely in **part** upon facilities controlled by WorldCom? OC-UCC is a local exchange and long distance customer at its offices in Cleveland, Ohio, and through its offices and church locations, in every state of the United States and Puerto Rico. At each location it receives and transmits voice and data that travel over or are interconnected with WorldCom owned or leased facilities that exist as a result of licenses or certificates issued **by** the Commission. In fact, anyone who utilizes the Internet is certain to be reliant upon WorldCom in its role as an Internet backbone provider. Indeed, it has been

⁸ Although the instant pleading is an informal objection, it contains all of the elements the Commission has relied upon in conferring standing to petitioners to deny: a declaration from an authorized representative of the petitioner with personal knowledge of the facts set out in the petition, a demonstration of standing, and service on all parties. See, *e.g.*, *The Providence Journal Co.*, Memorandum Opinion & Order, 12 FCC Rcd **2883**, para. 3 (1997) (setting out attributes expected of petitioners to deny).

⁹ See *Maumee Valley Broadcasting, Inc.*, 12 FCC Rcd 3487, para. 5 (1997) (reconsideration pending) (prerequisite for standing is one's ability to receive transmissions from Title III licensee at one's home).

estimated that as much as half the Internet traffic in the United States travels **over** WorldCom owned facilities.”

As a direct result of WorldCom's actions, OC-UCC will suffer substantial adverse consequences and "injury in fact" traceable to the conduct complained of. The nature of that injury is more fully discussed at Section F, *infra*, and consists of higher transmission rates to ratepayers like OC-UCC, an adverse economic effect on the U.S. economy generally and the telecommunications industry in particular, and a reduced pool of competitors from which to choose, among other things. This damage may be redressed only by the requested relief. Accordingly OC-UCC's interests are "within the zone of interests to be protected." A petitioner has standing when the petitioner demonstrates that injury in fact will result from the challenged action, and that the interest in question lies within the zone of interests to be protected by the Commission.” Therefore, OC-UCC has standing to file this informal objection.¹³

¹⁰ See, e.g., TeleGeography, *Controls the Most Internet Bandwidth, Connections, Revenue*, July 10, 2002 at <http://www.telegeography.com/press/releases/2002/10-j-1-20021111>

¹¹ See *Air Courier Conference of v. American Federation of Workers*, 498 U.S. 510 (1991) (“*Air Courier*”); *Assoc. of Data Processing Servs.*, 397 U.S. 150, 153 (1970); *Ballou v. Collins*, 397 U.S. 164 (1970); *Petition for Rulemaking to Establish Standards for Determining the Standing of Parties to Petition to Deny a Broadcast Application*, 82 F.C.C.2d 89, at ¶ 30 (1980). The zone of interest test denies a right of review if the petitioner's interest is so marginally related to or inconsistent with the purposes expressed or implicit in the statute or regulation that it cannot reasonably be said that Congress or the Commission intended to protect the cause of action. *Clark v. Securities Indus. Ass'n*, 479 U.S. 388, 399 (1987). *In re Metromedia Company*, 7 FCC Rcd 714, 715 (1992).

¹² *Rvc Services, Inc.*, 11 FCC Rcd 12136, para. 7 (5)

¹³ *American Legal Found. v. FCC*, 808 F.2d 84 (D.C. Cir. 1986); *Office of the United Church of Christ v. FCC*, 359 F.2d 9 (D.C. Cir. 1966) see *Lo American Tel Corporation*, 5 FCC Rcd 3993, at para. 9 (1994) (citing *Sierra Club v. Morton*, 405 U.S. 727 (1972)); *Petition for Rulemaking to Establish Standards for Determining the Standing of Parties to Petition to Deny a Broadcast Application*, 82 FCC 2d 89, at para. 20 (1980) (citing *Warth v. Seldin*, 122 U.S. 511 (1975)).

III. FACTS

WorldCom perpetrated the “largest instance of corporate fraud in the history of U.S. commerce.”¹⁴ WorldCom’s actions of fraud and deceit eventually imploded, exposing a corrupt corporate culture and resulting in the largest bankruptcy in U.S. history—an event which has grave implications for consumers, vendors, shareholders, and the communications industry as a whole. To cover the signs of its misconduct, WorldCom repeatedly misrepresented facts related to its financial condition to both the Securities and Exchange Commission (“SEC”) and the Commission in contravention of well-established SEC and Commission rules and policies and in violation of U.S. criminal statutes.

WorldCom’s actions are not the result of misunderstandings about gray areas of accounting practices. They are quite simply the result of the company’s own intent to deceive the Commission, other regulators, consumers, investors, and vendors. The chief regulator of America’s public companies, SEC Chairman Harvey L. Pitt, determined that WorldCom’s actions were not a “mistake” but a “fraud.”¹⁵ Moreover, there have already been three guilty pleas from senior and other management officials. On September 26, 2002, David F. Myers, the Senior Vice President and Controller of WorldCom during ~~the~~ pertinent time period, pled guilty to conspiracy to commit securities fraud, securities fraud, and false filings with the SEC.¹⁶ On October 7, 2002, another senior executive of WorldCom, Buford Yates, Jr. who is the Director of General Accounting, pled guilty to securities fraud and conspiracy.” On October 10, 2002,

¹⁴ See *supra* note 5

¹⁵ Harvey L. Pitt, Chairman, Securities and Exchange Commission, *Remarks Before the Economic Club of New York* (June 26, 2002), at <http://www.sec.gov/news/speech/spch573.htm> (last visited Oct. 7, 2002).

¹⁶ *United States v. Myers*, Plea, Case no. 02 Cr. 1261 (S.D.N.Y. September 26, 2002).

¹⁷ *Id.*

Betty Vinson, Director of Management Reporting, pled guilty to conspiracy to commit securities fraud and securities fraud.¹⁸

WorldCom's fraudulent actions have met with near-universal condemnation — from the President¹⁹ to Members of Congress” and the Chairman of the SEC.²¹ FCC Chairman, Michael Powell, described WorldCom's actions as “seemingly heinous”²²

Moreover, as demonstrated in this objection, WorldCom's management continues to deal with government regulators and investigators with remarkable arrogance and fails to accept any corporate responsibility for its wrongdoing. On the one hand, the company employed a

¹⁸ Devlin Barrett, *Two ~~Ex-~~ WorldCom Execs Pleads Guilty*, Oct. 10, 2002, at http://www.wywyg.com/145/http://news.findlaw.com/10-10-2002/20021010150007_15.html. Although the press have been reporting that Troy Normand, WorldCom's Director of Legal Entity Accounting, also pled guilty to conspiracy to commit securities fraud and securities fraud on October 10, 2002, the Southern District Reporters P.C., the court reporter, advised OC-UCC's counsel that press reports were incorrect. Only Ms. Vinson plead guilty, not Mr. Normand.

¹⁹ President Bush called WorldCom's actions “outrageous” and vowed to “hold all people accountable for misleading not only shareholders but employees as well,” CNN.com, *Bush: WorldCom 'outrageous'*, June 26, 2002, at <http://fvi.cnn.com/2002/fvi/news/06/26/worldcom/> (last visited Oct. 7, 2002).

²⁰ Chairman Billy Tauzin of the House Energy and Commerce Committee charged that “[t]his was not a simple bookkeeping mistake. Clearly, it was an orchestrated effort to mislead investors and regulators” Simon Romero, *WorldCom Facing Charges for Fraud; Inquiries Expand*, New York Times, June 27, 2002 at A1. Chairman Michael G. Oxley of the House Committee on Fin. Servs. stated that it “appears that senior WorldCom executives deliberately hid almost \$4 billion in expenses, disguising its true performance in order to keep earnings in line with analysts' estimates.” Opening Statement Michael G. Oxley, House Committee on Fin. Servs. (107TH Cong.), July 8, 2002 (Opening Statement of Michael G. Oxley). Representative Maxine Waters added that WorldCom's “improper accounting is no error, no mistake, it is calculated to enhance the company's net income and to hike its earnings before interest, depreciation, taxes and amortization. This made WorldCom appear healthier than it was, and thus more attractive to investors. . . . Aside from . . . WorldCom employees, thousands of employees in related industries could be laid off. Thousands of pensioners will lose their pensions and the damage to our economy is incalculable.” House Comm. on Fin. Servs. (107TH Cong.), July 8, 2002 (Opening Statement of Maxine Waters).

²¹ See *supra* note 15

²² Michael K. Powell, Chairman, Federal Communications Commission, *Press Briefing on WorldCom Situation*, July 16, 2002, at <http://www.fcc.gov/Speeches/Powell/2002/spmkip209.html> (last visited Oct. 7, 2002) (“*Powell July 16 Remarks*”).

sophisticated public relations campaign designed to admit its “misdeeds,” to “apologize” for those misdeeds, and to pledge its cooperation with government agencies.²³ On the other hand, WorldCom staked out an aggressive legal position in which the company maintains that it has engaged in no wrongdoing whatsoever.²⁴ Thus, actions that WorldCom’s own officials have described in conciliatory public statements as “indefensible”²⁵ have, in fact, been defended quite vigorously.²⁶

This arrogance led the company to equate the interests of WorldCom’s management with the public interest and to argue in essence that it is too big and important to the American economy to be punished. In a recent editorial, WorldCom’s President and Chief Executive Officer boldly asserted that notwithstanding any wrongdoing that occurred at the company, “it is in the interest of our national security, American consumers, and . . . WorldCom’s customers and shareholders to make WorldCom’s survival a top priority.”²⁷ Otherwise, WorldCom’s assets “would be put on the block in a ‘fire sale’ for pennies on the dollar.”²⁸

The facts as set forth in Attachment B further detail the magnitude of the fraud WorldCom perpetrated on its shareholders, lenders, American consumers, the SEC and the

²³ Hearings Before the House Comm. on Fin. Servs., 107TH Cong., (July 8, 2002) (Statement of John W. Sidgmore, President and CEO, WorldCom, Inc.) (“*Sidgmore July 8 Statement*”). Mr. Sidgmore’s statement is appended as Attachment E.

²⁴ *See generally Securities and Exchange Comm’n v. WorldCom, Inc.*, Answer, 1, Case No.: 02 CV 4963 (JSR)(S.D.N.Y. Aug. 23, 2002)(“*WorldCom Answer*”). In its Answer, WorldCom has denied that it violated any statute or SEC regulation or policy.

²⁵ John W. Sidgmore, *Why WorldCom Must Survive*, July 1, 2002, at <http://www.worldcom.com/infodesk/restatement/editorial> (last visited Oct. 8, 2002)(“*Sidgmore Editorial*”).

²⁶ *See supra* note 24.

²⁷ *See supra* note 25.

²⁸ *Id.*

Commission. The known facts and admissions reveal a portrait of stunning individual and corporate dishonesty, exposing a pervasive and corrupt corporate culture.²⁹ Indeed, the Washington Post, based on interviews and review of “[t]housands of pages of previously undisclosed company documents,” determined that WorldCom’s operations “reveal a grow-at-any-cost culture that made it possible for employees and managers to game the system internally and to deceive investors about the health of the business.”³⁰ It was a culture in which “whistle-blowers were often intimidated or ignored and where there were “no inventory controls, no fraud controls, no **nothing**.”³¹ This culture—and the numerous acts of individual and corporate deception and fraud catalogued above and as set forth in Attachment B—have now culminated in the largest bankruptcy in United States history.³²

IV. STATEMENT OF INTEREST

OC-UCC wishes to speak for the nation’s telecommunications consumers, the telecommunications workforce, and the communities dependent on telecommunications enterprises. Since 1954, OC-UCC and its predecessor in interest within the United Church of Christ (“UCC”) has been a leading proponent of public participation in communications policy,

²⁹ Deceptive revenue and commission enhancement was a practice that defined WorldCom from its sale force trenches to senior management. For example, simply to improve revenue and commissions, WorldCom’s sales division could close a data network contract for “\$1 million even if it cost \$2 million to fulfill the order.” Because “the pressure for revenue was intense all the way up the sales division, . . . there was little incentive for anyone to put a stop to other questionable practices.” Manipulating numbers was deep-seated in WorldCom’s culture—even its past acquisitions “helped obscure the company’s actual performance.” Jonathan Krim, *Fast and Loose at WorldCom*, The Washington Post, Aug. 29, 2002 at A1, at <http://washingtonpost.com/wp-dyn/articles/A9244-2002Aug28.html> (last visited Sept. 16, 2002)(“*Fast and Loose at WorldCom*”).

³⁰ *Id.*

³¹ *Id.*

³² WorldCom listed \$107 billion in assets and \$41 billion in debts as the basis for its bankruptcy filing. WorldCom’s bankruptcy easily surpasses the second largest bankruptcy filing record set by Enron on December 2, 2001, which listed \$49.8 billion in assets and \$31.2 billion in debt.

and of diversity of ownership and employment in all industries subject to Commission regulation. Indeed, OC-UCC essentially founded the modern public interest movement in the media and telecommunication industries.³³

OC-UCC's decision to bring the issues in this petition to the Commission's attention harkens back to UCC's own history as the conscience of the communications industry. In 1955, UCC brought the first complaints against Jackson, Mississippi's rigidly segregated television stations, including Lamar Life Insurance Company's WLBT-TV, an NBC affiliate. WLBT displayed such contempt for its own audiences that the station would cut off the network feed when NBC's nightly news contained interviews with civil rights heroes like Thurgood Marshall. After the FCC repeatedly rejected UCC's complaints, the United States Court of Appeals rejected the Commission's theory that corruption can be cured by affording an unreconstructed wrongdoer an unsupervised chance to do better and ordered the FCC to hold a hearing.³⁴ When the Commission held a hearing so deficient that it was deemed "beyond repair," the court ran out of patience and vacated the license renewal itself.³⁵

As the saga of desegregation was playing itself out, UCC petitioned the FCC for rules to prohibit employment discrimination and require broad recruitment.³⁶ After the Commission adopted those rules,³⁷ many of the industries regulated by the FCC made great strides in

³³ For much of this history -- and what it meant for the television industry and the nation, see Kay Mills, *Changing Channels: The Civil Rights Case that Changed Television*, (Civil Rights Forum on Communications Policy) (2000).

³⁴ *Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir. 1966) ("UCC I").

³⁵ *Office of Communication of the United Church of Christ v. FCC*, 425 F.2d 543 (D.C. Cir. 1969) ("UCC II").

³⁶ See *Nondiscrimination in Broadcasting Employment Practices*, 13 F.C.C. 2d 766 (1968).

³⁷ *Nondiscrimination in Broadcasting*, 18 F.C.C. 2d 240 (1969).

desegregation and the promotion of equal opportunity. Further details regarding OC-UCC's extraordinary efforts in defending the public interest are set forth in Attachment C.

Today, other forms of misconduct by FCC regulatees, in addition to discrimination, diminish the "rapid, efficient, nationwide and world-wide wire and radio communication service with adequate facilities at reasonable charges" that all Americans are entitled to expect from their FCC regulated industries."³⁸

Thirty-six years after *UCC I*, another Jackson, Mississippi-based company – WorldCom – tests the limits of the Commission's responsibility to protect the public against the intentional misconduct of regulatees. WorldCom's campaign of fraud jeopardizes the nation's telecommunications infrastructure, imperils national security, and has caused lasting damage to the credibility and competitiveness of the economy's telecommunications sector.

With the communications and information technology sector representing approximately one-sixth of our economy,³⁹ it is difficult to imagine any corporate fraud that strikes more painfully at the heart of the nation's health and well-being than WorldCom's fraud. The rise and fall of WorldCom illustrates why the full participation of all Americans in the regulation of telecommunications and information technology is just as essential to the success of the economy, and to democracy, as access to broadcast television was in 1966.

OC-UCC recognizes that some sympathy may be due a company that declares bankruptcy because of the unlawful behavior of competitors, or because of the incompetence of insiders. But a company that declares bankruptcy because of the unlawful behavior of insiders – as is the case with WorldCom – is owed not sympathy, but scrutiny.

³⁸ 47 U.S.C. § 151 (1996).

³⁹ *Digital Economy 2002*, the Commerce Department's fourth annual report on the information technology (IT) revolution.

As has been clear for years, FCC regulatees accept public responsibilities in exchange for being granted limited access to public spectrum, public rights of way and publicly protected rates and services. A financial bankruptcy may relieve a company of the pressure of financial debts, but a moral bankruptcy does not relieve a company of its moral debts. How ironic would it be if a company is fully accountable for its misbehavior if the consequences are not grave enough to trigger a bankruptcy -- yet immune from those consequences if the misconduct is grave enough to cause a bankruptcy.

Just as the Commission's rules were insufficient to address the harm done by WLBT in 1966, so too are the bankruptcy laws insufficient to address the harm done by WorldCom in 2002. There are public interest consequences of the misconduct of FCC regulatees. A bankruptcy court cannot cure these ills. It can restore the injured corporate entity to health, but it cannot restore to health all of those who the corporate entity has directly or collaterally harmed. It can offer little specific deterrence and almost no general deterrence. The bankruptcy courts were not designed for that purpose. Rather, Congressional design is for the FCC to fulfill that role. Only the FCC can reform the industry by exercising its Congressionally mandated "duty . . . to refuse licenses or renewals to any person who engages or proposes to engage in practices which will prevent either himself or other licensees or both from making the fullest use of radio facilities."⁴⁰ No representative of the public without inside knowledge can know precisely the extent of the harm caused by a particular course of fraudulent conduct.⁴¹ Only the Commission can investigate and measure that harm.

⁴⁰ In re *Teleprompter and Group W*, 87 F.C.C. 2d 531,541(1981), *aff'd*, 89 F.C.C.2d 417 (1982).

⁴¹ A petitioner, like OC-UCC, is not expected to "fully establish . . . what it is the very purpose of the hearing to inquire into." *Citizensfor Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392,397 (D.C. Cir. 1985).

When major telecommunications enterprises are not being managed responsibly, someone needs to serve as a watchdog to ensure that the harm done is cured to the fullest extent possible. Further, someone needs to represent the public at the table at which safeguards could be put in place to prevent additional wrongdoing, whether by the same company or by similarly situated ones. As a pioneer in public interest advocacy in broadcasting, OC-UCC now steps forward to perform that function in telecommunications as well.

V. THE FCC SHOULD DENY WORLDCOM'S ASSIGNMENT APPLICATIONS BECAUSE WORLDCOM IS UNFIT TO BE A FCC LICENSEE

A. The Commission Has Clear Authority to Take Action

The Commission must reject WorldCom's Assignment Applications, as a grant would be in direct contravention of the Communications Act of 1934, as amended ("Act") and established Commission policy, which mandates that the Commission may only grant assignment applications if it finds that the grant would serve the public interest, convenience, and necessity.⁴² The facts known and admitted by WorldCom do not support such a finding.

⁴² The Commission must find that grant of a Title III application would serve *the* public interest, convenience and necessity "upon examination of such application and upon consideration of such other matters as the Commission may officially notice . . ." 47 U.S.C. § 309(a). A Title II common carrier applicant for a new line or for an extension of any existing line must obtain from the Commission "a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line . . ." 47 U.S.C. § 214(a). Moreover, under Section 214(a), a carrier is prohibited from discontinuing, reducing or impairing service without first obtaining from the Commission "a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby. . . ." *Id.* While the Commission modified its rules to confer blanket Section 214 authority for new lines of all domestic carriers and streamlined procedures by which a domestic carrier may discontinue, reduce, or impair service over a line, the Commission retained its enforcement authority to handle abusive practices to protect consumers, including its ability "to revoke a carrier's section 214 authority when warranted. . . ." *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*, Report and Order in CC Docket No. 97-11, and Second Memorandum Opinion and Order in AAD File No. 98-43, 14 FCC Rcd 11364, para. 2 (1999).

As set forth in detail below, the grant of WorldCom's Assignment Applications would be *per se* inconsistent with the public interest, convenience, and necessity.⁴³ Accordingly, as required by the Act and longstanding precedent, the Commission must deny WorldCom's Assignment Applications based on WorldCom's lack of character qualifications to continue as a Commission licensee.

1. The Commission Has Established Clear Character Qualifications for Holders of FCC Authorizations

The Commission consistently finds that certain actions by a licensee or applicant are so egregious and outside the realm of acceptable conduct that they disqualify the licensee or applicant from becoming or remaining a FCC licensee. The Commission broadly categorizes such activities into FCC-related misconduct and non-FCC related misconduct.

The Commission's primary concern with a licensee's or applicant's violation of the Act or Commission rules and policies is that such misconduct has a clear relationship with the traits of veracity and reliability. FCC-related misconduct raises the question of "whether the licensee will in the future be likely to be forthright in its dealings with the Commission and to operate its station consistent with the requirements of the Communications Act and the Commission's Rules and policies."⁴⁴ Non-FCC related misconduct raises character qualification issues because "there may be a sufficient nexus between fraudulent representations to another governmental unit and the possibility that an applicant might engage in similar behavior in its dealings with the Commission"⁴⁵ and because a "licensee's willingness to violate other laws, and, in particular, to

⁴³ *Id.*

⁴⁴ *Policy Regarding Character Qualifications in Broadcast Licensing*; Report, Order and Policy Statement, 102 F.C.C. 2d 1179, para. 55 (1985) ("Character Policy Statement"), modified, 5 FCC Rcd 3252, para. 7 (1990), recon. granted in part, 6 FCC Rcd 3448, para. 6 (1991), modified in part, 7 FCC Rcd 6564, paras. 9-10 (1992).

⁴⁵ *Id.* at paras. 35-6.

commit felonies, also bears on [the Commission's] confidence that an applicant or licensee will conform to FCC rules and policies.”⁴⁶ It is now beyond dispute that WorldCom intentionally engaged in numerous instances of FCC-related and non-FCC related misconduct — misconduct that disqualifies WorldCom from continuing to be a FCC licensee.

In 1988, the Commission issued a decision in *MCI Telecommunications Corp.*, holding that the *Character Policy Statement* – which had originally been drafted for and applied only to broadcast licensees – was to be applied to common carrier licensees as well.⁴⁷ Since recognizing the applicability of these character standards to common carriers, the Commission rigorously applied the standards to entities that hold Section 214 authorizations: ‘ submarine and cable landing licenses,’⁴⁹ earth and space station authorizations;’ and Part 22 cellular licenses.⁵¹ In determining that it should allow the assignment of Section 214 authorizations, the Commission noted that it was “required to determine whether [the proposed assignee had] the necessary

⁴⁶ *Policy Regarding Character Qualification in Broadcast Licensing*, Policy Statement and Order, 5 FCC Rcd 3252, paras. 4-5 (1990) (“*Further Policy Statement*”).

⁴⁷ *See MCI Telecommunications Corp.*, 3 FCC Rcd 509, para. 31 (1988) (citing *Character Policy Statement*, 1195-97, 1200-03, modified, 5 FCC Rcd 3252 (1990), recon. granted in part, 6 FCC Rcd 3448 (1991), modified in part, 7 FCC Rcd 6564, 6566 (1992) (“*Further Character Qualification Modifications*”).

⁴⁸ *See, e.g., Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation, Transferor, To SBC Communications, Inc., Transferee*, 13 FCC Rcd 21292 (1998) (“*Southern New England Telecommunications Transfer Application*”).

⁴⁹ *See, e.g., Application of GTE Corporation, Transferor and Bell Atlantic Corporation, Transferee For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, 15 FCC Rcd 14032 (2000).

⁵⁰ *See, e.g., Amendment Of The Commission's Regulatory Policies To Allow Non-US. Licensed Space Stations To Provide Domestic And International Satellite Service In The United States*, 12 FCC Rcd 24094 (1997).

⁵¹ *See, e.g., Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Communications Company Application For Transfer of Control of Eighty-two Cellular Radio Licenses to Celco Partnership*, 10 FCC Rcd 13368 (1995).

‘citizenship, character, financial, technical and other qualifications.’”⁵² The Commission must now evaluate WorldCom by the same *Character Policy Statement* standards that have been diligently applied to other licensees in the past to determine whether WorldCom should be permitted to escape its wrongdoing by transferring its FCC Authorizations to WorldCom-DIP.

The qualifications set forth in the *Character Policy Statement* are a well-defined and established body of Commission law that provides guidance as to the character qualifications that will serve the public interest. These guidelines do not require the Commission to wait until an applicant is an adjudicated felon. Rather, they provide the Commission with the ability to make a decision which considers the public harm inherent in granting a license **to** an applicant that knowingly:

- (1) makes false statements to the Commission;
- (2) willfully or repeatedly fails to operate substantially as set forth in the license; or
- (3) willfully or repeatedly violates the Communications Act or FCC rules, such as making misrepresentations to FCC staff or demonstrating a lack of candor.

These classes of misconduct provide the Commission with an adequate opportunity to target those individuals or companies, like WorldCom, that display a pattern of disregard for the rules and regulations.

WorldCom regularly made intentional and egregious misrepresentations to the Commission by filing fraudulent and inaccurate financial information and by failing to amend pending applications. WorldCom made intentional and egregious misrepresentations to the SEC in violation of the Securities Exchange Act and the rules and policies of the SEC. These types of

⁵² See *Southern New England Telecommunications Transfer Application*, para 65.(citing *Craig O. McCaw, Transferor, and American Telephone & Telegraph Co., Transferee, For Consent to the Transfer of Control of McCaw Cellular Communications, Inc. and its Subsidiaries*, 9 FCC Rcd 5836, para. 8 (1994)).

misconduct – both before Commission and before other government agencies – are examples of conduct for which the Commission frequently disqualifies a licensee or applicant from remaining or becoming a FCC licensee.

a. WorldCom Engaged in Multiple Misrepresentations to FCC By Submitting Fraudulent Financial Information to FCC

It is undeniable that WorldCom engaged in disqualifying misconduct before the FCC by knowingly submitting fraudulent and inaccurate financial information in its FCC filings. Under longstanding Commission rules, WorldCom and other telecommunications entities must report a variety of financial and revenue data to the Commission on a periodic basis. For example, Sections 1.785(b) and 43.21(b) of the Commission’s rules require WorldCom and other carriers to submit to the FCC “verified” copies of the **10-K** reports they have submitted to the SEC.⁵³ WorldCom and other carriers must also annually report to the FCC their operating revenues each year and the value of their total communications plant at the end of that year.⁵⁴ In addition, carriers, including WorldCom, must report data on gross billed revenues on an annual and quarterly basis.⁵⁵ This data is filed on FCC Form 499-A or 499-Q, signed by an officer of the company, and (along with revenue information collected on FCC Form 159 submitted in September of each year) is used by the Commission to calculate regulatory fees as well as contributions to support the Universal Service Fund (“USF”), Local Number Portability Administration, North American Numbering Plan Administration, and Telecommunications

⁵³ 47 C.F.R. §§ 1.785(b), 43.21(b).

⁵⁴ 47 C.F.R. § 43.21(c).

⁵⁵ 47 C.F.R. §§ 54.706, 54.711, 54.713, 64.604. All telecommunications carriers providing interstate telecommunications service, interstate telecommunications providers offering interstate telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators must contribute to the Universal Service Fund and file a Telecommunications Reporting Worksheet annually (on FCC Form 499-A) and quarterly (on FCC Form 499-Q). 47 C.F.R. §§ 54.706, 54.711, 54.713.

Relay Service.⁵⁶ Furthermore, WorldCom and other international common carriers who are subject to Section 43.61 of the Commission's rules must also report data for the preceding calendar year on actual traffic and revenue data for each service provided.⁵⁷

As required by the Commission's rules, WorldCom filed a variety of financial information with the Commission during the years at issue. For example, on or about March 13, 2002, WorldCom submitted a copy of its Form 10-K for calendar year 2001. That document, signed by its Chief Financial Officer and each of its directors, presented a variety of financial information (including total costs for 2001), discussed the company's "significant accounting policies," and represented that the financial information contained in the 10-K was "prepared in accordance with accounting principles generally accepted in the United States."⁵⁸ Likewise, on April 14, 2000, July 7, 2000, May 10, 2001, and April 15, 2002, the company reported to the Commission revenue and investment figures in accordance with section 43.21(c) of the FCC's rules. WorldCom similarly reported international traffic revenues on or about August 16, 2002, August 29, 2000, September 27, 2000, July 31, 2001, and October 31, 2001.

It is now a matter of public record that major components of the financial information submitted by WorldCom to the Commission (and SEC) were false – and that the submissions

⁵⁶ Every common carrier providing interstate telecommunications services is required to contribute to the Telecommunications Relay Services (TRS) Fund based upon its relative share of interstate end-user telecommunications revenues. 47 C.F.R. § 64.604. The calculations are based on the Telecommunications Reporting Worksheet. 47 C.F.R. § 64.604(c)(5)(iii)(B). Moreover, all telecommunications carriers in the U.S. are required to contribute to the costs of establishing a numbering administration and the contributions are based on the Telecommunications Reporting Worksheets. 47 C.F.R. § 52.17. All telecommunications carriers must contribute to the costs of long-term number portability. 47 C.F.R. § 52.32.

⁵⁷ *Id.*; see also 47 C.F.R. § 43.61.

⁵⁸ U.S. SEC Form 10-K for fiscal year ended December 31, 2001, filed by WorldCom, F-7. A copy of WorldCom's Form 10-K is appended as Attachment F.

were known by corporate officers and other senior executives to be without foundation.⁵⁹ As the SEC succinctly stated, WorldCom “reported on its Consolidated State of Operations contained in its 2001 Form 10-K that its line costs for 2001 totaled \$14.739 billion and that its earnings before income taxes and minority interests totaled \$2.393 billion, whereas, in truth and in fact, WorldCom’s line costs for that period totaled approximately \$17.794 billion, and it suffered a loss of approximately \$662 million.”⁶⁰ This means that WorldCom reported several billions of dollars of baseless earnings to the Commission.

Indeed, WorldCom admitted that \$3.055 billion in line costs (which represent fees paid by WorldCom to third parties for network access) were improperly transferred from expense to capital accounts during 2001.⁶¹ WorldCom further admitted that, despite the company’s representations, these transfers did not comply with generally accepted accounting principles.⁶²

Since the filing of the SEC Complaint on June 26, 2002, WorldCom admitted additional improprieties in years prior to 2001. WorldCom acknowledged that in 1999, 2000, 2001, and the first quarter of 2002, an additional \$3.3 billion in earnings were “improperly reported.”⁶³ This means that WorldCom’s earlier 10-Ks for these accounting period—as filed with the FCC and SEC—also contain misrepresentations. Although WorldCom has not yet attempted to explain the precise manner in which these earnings were improperly reported, press accounts strongly

⁵⁹ *WorldCom June 25 Press Release.*

⁶⁰ *Securities and Exchange Commission v. WorldCom, Inc.*, Complaint, at 3, Case No. 02 CV 4963 (JSR) (S.D.N.Y. June 26, 2002) (“*SEC Complaint*”). A copy of the complaint is appended as Attachment J. *See also* Securities Exchange Act of 1934, 15 U.S.C. §§ 78u(d), 78b and 78m(a).

⁶¹ *WorldCom June 25 Press Release.*

⁶² *Id.*

⁶³ *WorldCom Aug. 8 Press Release*

suggest that they involve the blatant and knowing manipulation of “reserve” accounts.⁶⁴

Depending on how these earnings were misstated, restatements may impact not only costs, but also revenue figures.

It is abundantly clear that WorldCom repeatedly submitted fraudulent financial information to the FCC, just as it did to the SEC. The falsity of the information provided to the Commission was known to senior corporate managers and was intended to misrepresent WorldCom as a profitable business when it was not.

The Commission vigorously enforces its policy against this type of misrepresentation and lack of candor by both applicants and licensees.⁶⁵ The Commission certainly does not tolerate deception regarding the financial status of an applicant. For example, the Commission found an “egregious” and “inexcusable lack of candor” on the part of **an** applicant who submitted an application for a new license without disclosing its deteriorating financial situation.⁶⁶

⁶⁴ Henny Sender, *Inside the WorldCom Numbers Factory*, Wall ST. J., August 21, 2002, at C1.

⁶⁵ See, e.g., *SBC Comms Inc. Apparent Liability for Forfeiture*, 24 FCC Rcd 1225, para. 66 (2001) (“We consider misrepresentation to be a serious violation, as our entire regulatory scheme rests upon the assumption that applicants will supply [the Commission] with accurate information.”) (internal citations omitted); *Applications of Liberty Production*, Memorandum Opinion and Order, 16 FCC Rcd 12061, at para. 43 (2001) (“[I]mmaterial misrepresentations can be a basis for disqualification.” citing *WOKO, Inc. v. FCC*, 329 U.S. 223 (1946)); *Liberty Cable Co., Inc.*, Decision, 15 FCC Rcd 25050, para. 56 (2000) (“[T]he duty of candor requires applicants to be fully forthcoming as to all facts and information that may be decisionally significant to their applications.”); *The Commission’s Forfeiture Policy Statement*, Report and Order, 12 FCC Rcd 17087, para. 21 (1997), *recon. denied* 15 FCC Rcd 303 (1999) (“Regardless of the factual circumstances of each case, misrepresentation to the Commission is always an egregious violation.”); *Garden State Broadcasting Limited Partnership v. FCC*, 996 F.2d 386, 393 (D.C. Cir. 1993) (“[D]eliberate failures to produce information can result in disqualification for lack of candor.”); *Fox River Broadcasting, Inc.*, 93 F.C.C.2d 127, 130 (1983) (“Our concern with misrepresentation and lack of candor stems from the necessity of relying on licensees’ representations to the Commission.”); *RKO v. FCC* at 229 (“As a licensing authority, the Commission is not expected to ‘play procedural games with those who come before it in order to ascertain the truth.’”) (internal citation omitted).

⁶⁶ See *George E. Cameron Jr. Communications (KROQ) Burbank, California for Renewal of License*, Decision, 91 F.C.C.2d 870, 895-96 (1982) (“To have prosecuted an application for a **new** broadcast station . . . while concurrently being unwilling or unable to financially support their

“[F]alse certifications are abuses of the Commission’s processes which waste the resources of both the Commission and legitimate qualified applicants, which may not only break Commission rules . . . ,but may subject the applicant to a monetary forfeitures . . . ,as well as criminal liability”⁶⁷ Knowing that the Commission specifically relies on the financial information supplied to it by WorldCom and other carriers, WorldCom nevertheless chose to waste Commission resources by filing fraudulent financial reports.

b. WorldCom’s Misrepresentations Undermine the FCC’s Regulatory Objectives.

WorldCom’s wrongdoing undermines the FCC’s reliance on company supplied data to establish and implement its regulatory objectives. The FCC publishes a number of reports containing analysis of the financial information supplied by telecommunications entities,⁶⁸ and these reports often serve as an official record regarding the status of the market. For example, the Commission’s Statistics of Communications Common Carriers states:

The Statistics of Communications Common Carriers (SOCC), which has been published annually since 1939, is one of the most widely used reference works in the field of telecommunications. It is **the** only permanent record of common carrier activity published by the Government Printing Office and sent to repository libraries.⁶⁹

existing station is shocking. . . .On the basis of this stark lack of candor alone, GECC is unfit as a licensee.”).

⁶⁷ 62 *Broadcasting, Inc.*, Initial Decision of Administrative Law Judge Joseph Chachkin, 3 FCC Rcd 4429,4449 (1988)(citing *In the Matter of Financial Certifications by Applicants for Broadcast Station Permits*, 2 FCC Rcd 2122 (1987)(internal citations omitted)).

⁶⁸ These reports (and their latest release dates) include: *Statistics of Communications Common Carriers* (2001/2002 Edition); *Telecommunications Industry Revenues* (2002); *Reference Book of Rates, Price Indices and Household Expenditures for Telephone Service* (July 2002); *Trends in Telephone Service* (May 2002); *Statistics of the Long Distance Telecommunications Industry* (January 2001); *Fiber Deployment Update – End of Year 1998* (1999); *International Telecommunications Data* (2000); *Trends in the International Telecommunications Industry* (April 2001).

⁶⁹ See, e.g., *Statistics of Communications Common Carriers* (ed. 2000/2001), Table 11, FCC (rel. Sept. 21, 2001) available at http://Nftp.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/SOCC/00socc.pdf.

Moreover, the FCC and other governmental agencies use the information from these reports to assess the condition of the market and establish regulatory policies.⁷⁰ Indeed, Chairman Powell recently stated that “[r]egulatory accounting data and related information filed by telecommunications carriers is used by federal and state telecommunications policymakers to fulfill various responsibilities, such as determining interstate access charges, evaluating federal-state jurisdictional separations, setting rates for unbundled network elements and calculating universal service support.”⁷¹ In addition, the Commission uses carrier-supplied information for purposes of evaluating mergers or acquisitions,⁷² resolving carrier complaints,⁷³ and managing numbering resources.⁷⁴ It also relies on company self-reporting of data to establish and collect fees and contribution payments associated with its regulatory and support programs.⁷⁵

WorldCom’s repeated intentional misrepresentations jeopardize all of these efforts. WorldCom’s fraudulent financial figures represent an enormous share of the telecommunications

⁷⁰ Non-government entities—including vendors, investors and competitors—use the information to monitor and evaluate the telecommunications industry and participants.

⁷¹ Michael K. Powell, Chairman, Federal Communications Commission, Press Statement *Re: Federal-State Joint Conference on Regulating Accounting Issues*, Sept. 5, 2002, at [http://hraunfoss.fcc.gov/edocs public/attachmatch/DOC-225969A1.doc](http://hraunfoss.fcc.gov/edocs/public/attachmatch/DOC-225969A1.doc) (last visited Oct. 8, 2002)(emphasis in original).

⁷² See, e.g., *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from; MediaOne Group, Inc., Transferor, To AT&T Corp. Transferee*, Memorandum Opinion and Order, 15 FCC Rcd 9816 (2000); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor To AT&T Corp., Transferee*, Memorandum Opinion and Order, 14 FCC Rcd 3160 (1999).

⁷³ See, e.g., *AT&T Corp. v. Business Telecom, Inc., et al.*, Memorandum Opinion and Order, 16 FCC Rcd 12312 (2001).

⁷⁴ See, e.g., *Numbering Resource Optimization*, Notice of Proposed Rulemaking, 14 FCC Rcd 10322 (1999).

⁷⁵ See, e.g., *Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, Tenth Report and Order, 14 FCC Rcd 20156 (1999).

infrastructure and services market, and clearly affect the accuracy of the FCC reports and analyses that contain data supplied by WorldCom. For example, the FCC's most recent Statistics of Communications Common Carriers specifically cites WorldCom's 10-K in its compilation of costs, expenses and revenues.⁷⁶ This data, as well as FCC's analyses based on this data is undeniably inaccurate and unreliable as a result WorldCom's fraud.

Because the Commission must rely on the information provided by its licensees, the agency has treated even minor misrepresentations seriously.⁷⁷ **Here**, the fraud committed by WorldCom was willful, sweeping in scope, and showed a total disregard for its responsibilities as a government licensee.

c. Failure to Inform FCC of Material Changes in Financial Information Violates Section 1.65 of the Commission's Rules

WorldCom violated Section 1.65 of the Commission's rules, which requires applicants to maintain the accuracy and completeness of information provided in applications and specifically requires applicants to apprise the Commission "[w]henver there has been a substantial change as to any other matter which may be of decisional significance"⁷⁸ WorldCom's failure to inform the Commission of material changes in information provided in connection with its

⁷⁶ See *supra* note 69.

⁷⁷ *Character Policy Statement*, 1025 F.C.C.2d 1210-11 ("The Commission is authorized to treat even the most insignificant misrepresentation as disqualifying."). See also *Ortiz Radio Corp., v. FCC*, 941 F.2d 1253, 1260 (D.C. Cir. 1991); *Welch Communications, Inc.*, Decision, 7 FCC Rcd 4542, para. 114 (1992), *aff'd*, 8 FCC Rcd 1285 (1993); *Pontchartrain Broadcasting Company, Inc.*, Decision, 7 FCC Rcd 1898, para. 18 (1992), *aff'd*, 8 FCC Rcd 2256 (1993); *Mid-Ohio Communications, Inc.*, Decision, 104 FCC 2d 572, para. 46 (1986), *aff'd*, 5 FCC Rcd 940 (1990). See *SBC Apparent Liability Order*, 16 FCC Rcd 12306 (rejecting argument that violations were minor because each violation could compromise the integrity of the Carrier-to-Carrier Performance Plan).

⁷⁸ 47 C.F.R. § 1.65. When information provided in an application is no longer "substantially accurate and complete in all significant respects," the applicant must also amend the application. Amendments are to be made as promptly as possible, but in any event within 30 days, unless good cause is shown.

pending applications violates that rule. On June 25, 2002, the day that WorldCom first announced that it improperly stated financial data for the year 2001 and the first quarter of 2002, WorldCom had twelve applications pending before the Commission. To OC-UCC's knowledge, WorldCom has not amended its pending applications to reflect that it "improperly reported earnings"⁷⁹ in submissions to the FCC and SEC, to report the SEC's determination that the company engaged in securities fraud, or to report that senior corporate executives had been indicted, and plead guilty to, criminal charges of securities fraud. WorldCom even failed to mention its misdeeds in its Assignment Applications to transfer the FCC Authorizations to WorldCom-DIP.⁸⁰

WorldCom's failure to disclose this information to the Commission is in manifest violation of Section 1.65 of the Commission's rules because WorldCom's misrepresentations are of decisional significance in the FCC's consideration of WorldCom's pending requests for authorization.⁸¹ Indeed, WorldCom has yet to report any of its wrongdoing or misstatements to the FCC in any of its filings.⁸²

⁷⁹ *WorldCom Aug. 8 Press Release.*

⁸⁰ *See Assignment Applications.*

⁸¹ *See Applications of Shareholders of GAF Corp. Samuel J. Heyman*, Memorandum Opinion and Order, 7 FCC Rcd 3225, at para. 17 (1992) ("[The section 1.651 requirement to amend is triggered by a substantial change as to any matter of decisional significance.]; *Southern Broadcasting Co. (WGHP-TV)*, Memorandum Opinion and Order, 38 FCC 2d 461,464, para. 7 (1972)(requiring applicant to inform Commission "of *all* facts, whether requested in Form 303 or not, that may be of decisional significance so that the Commission can make a realistic decision based on all relevant factors.")(emphasis in original).

⁸² The fact that the media has extensively covered WorldCom's accounting fraud does not excuse WorldCom's violation of Section 1.65. The D.C. Circuit rejected the argument that media reports of an investigation are sufficient notice to the FCC of a substantial change in a pending application in lieu of compliance with Section 1.65. *RKO General, Inc. v FCC*, 670 F.2d 215, 229 n.39 (D.C. Cir. 1981)(*"RKO v. FCC"*)(*"RKO responds that it would have been 'absurd' for RKO to 'cover up' the SEC investigation in light of contemporary newspaper reports of that investigation. ... But other, more prominent parties have attempted such cover-ups in the past despite even greater attention from the media, and in any event the Commission cannot be expected to rely only on hearsay sources for the information required under section 1.65."*).

The intent to deceive, a necessary element of misrepresentation, is amply demonstrated by the fact that WorldCom never formally attempted to bring to the Commission's attention that the financial data was inaccurate and/or that modifications in the Commission's industry models would be necessary. This willful and uncorrected misrepresentation is distinguishable from cases where licensees voluntarily disclosed mistakes or inaccuracies to the Commission. Here there was a clear and ongoing intent to conceal the true facts from the Commission.⁸³

Misrepresentations involve false statements of fact made with an intent to deceive, while lack of candor involves concealment, evasion and other failures to be fully informative.⁸⁴ Both represent deceit, differing only in form.⁸⁵ Moreover, "these seemingly heinous acts"⁸⁶ of WorldCom were committed with "deceptive intent." The SEC Complaint and federal indictment against WorldCom's CFO detail the depth of the company's deception.⁸⁸ While it steadfastly refuses to formally admit its wrongdoing in court, WorldCom has publicly acknowledged the fraud and set forth in its own press releases and filings with the SEC a detailed

⁸³ See *Enron Corp.*, 17 FCC Rcd 11454, para. 1 (2002) (finding that although it had operated dozens of facilities without FCC licenses and authorizations, "Enron had voluntarily brought the matter to the Commission staffs attention.").

⁸⁴ See *In re Applications of Fox River Broadcasting, Inc.*, 93 FCC 2d 127, para. 6 (1983) ("Fox River Broadcasting Order").

⁸⁵ *Id.*

⁸⁶ *Powell July 16 Remarks.*

⁸⁷ See *MCI Petition for Revocation* at 512. ("Unless there is evidence showing 'deceptive intent,' we will not be able to find that misrepresentation or lack of candor has occurred.")(citation omitted).

⁸⁸ *Sullivan and Yates Indictment* at p. 15. ("By falsely concealing line costs and thereby lowering publicly reported expenses, SCOTT D. SULLIVAN and BUFORD YATES, JR., the defendants, and their co-conspirators were able to assure that WorldCom's 2001 Form 10-K reported to the investing public that WorldCom's line costs expressed as a percentage of overall company revenues remained fairly consistent over a three-year period, namely 41.0% for 1999; **39.6%** for 2000, and 41.9% for 2001, when, in truth and in fact, as SULLIVAN, YATES, and their co-conspirators well he w , line costs as a percentage of overall company revenue for 2001 had grown to approximately 50%.")

chronology of the actions its employees took in order to lie to consumers, shareholders, lenders, vendors, and government regulators (including both this Commission and the SEC).⁸⁹ Not only does the Commission "refuse to tolerate deliberate misrepresentations,"⁹⁰ it may also premise a finding of lack of candor on omissions.⁹¹ That each are present in WorldCom's dealings with the Commission is irrefutable.⁹² Moreover, an examination of WorldCom's conduct will show lack of candor in nearly all of WorldCom's dealings with other government agencies

B. WorldCom Fails to Meet the Clear Minimum Character Qualification Requirements Established by the FCC

Examination of non-FCC related misconduct of FCC licensees has been a long-established part of the licensing process for television and radio broadcasters because of the FCC's recognition that an applicant's misconduct may reflect on the "likelihood that an applicant will deal truthfully with the Commission and comply with the Communications Act and our rules

⁸⁹ *WorldCom June 25 Press Release; Revised Section 21(a)(1) Statement to SEC; WorldCom Aug. 8 Press Release.*

⁹⁰ *Nick J. Chaconas for Renewal of License Station WHMC, Gaithersburg, MD*, Decision, 28 FCC 2d 231, 233 (1971). *See also WOKO, Inc. v. FCC* at 227; *WMOZ, Inc.*, 36 FCC 202, 237-39 (1964), *aff'd* 3 F.C.C.2d 637 (1966).

⁹¹ *RKO v. FCC* at 230

⁹² Late reporting often manifests an intent to delay or conceal the submission of damaging information. Consequently, Section 1.65 issues are often independent grounds for designation for hearing. *See, e.g., Garden State Broadcasting Limited Partnership v. FCC*, 996 F.2d 386, 393 (D.C. Cir. 1993) and *David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253, 1259 (D.C. Cir. 1991) (each holding that intentional violations of Section 1.65 are potentially disqualifying); *Liberty Cable Co., Inc.*, 11 FCC Rcd 14133, 14142 (1996) (designating Section 1.65 issues where operator of fixed microwave service facilities failed to notify Commission of provision of service to interconnected, non-commonly owned buildings and failed to notify Commission of premature initiation of service); *Maria M. Ochoa*, 9 FCC Rcd 56, para. 25 (1993) (designating Section 1.65 issue where FM applicant failed to timely disclose nonavailability of transmitter site); *Algleg Cellular Engineering*, 6 FCC Rcd 2921, para. 22 (1991) (designating Section 1.65 issue where cellular applicant failed to submit timely reports of information germane to pending application; ALJ may consider intent in determining remedy); *Arizona Mobile, supra*, 66 F.C.C.2d at 703 (designating Section 1.65 issue going to whether telephone companies "have continued to keep the Commission advised of 'substantial and significant changes,' as required by Section 1.65").